

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 31 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DANIEL LEE BAKER,)	2 CA-HC 2012-0005
)	DEPARTMENT B
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
THE STATE OF ARIZONA,)	Appellate Procedure
)	
Respondent/Appellee.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20040490

Honorable Ted B. Borek, Judge

AFFIRMED

Daniel Lee Baker

Phoenix
In Propria Persona

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent/Appellee

K E L L Y, Judge.

¶1 Appellant Daniel Lee Baker appeals from the trial court's order in Baker's habeas corpus proceeding denying his motion requesting that the court "resume review" of his petition for writ of habeas corpus. We affirm.

¶2 In CR20040488, CR20042647, and CR20040490, Baker was convicted after three separate jury trials of an aggregate of ten counts each of aggravated driving under the influence and aggravated driving with an alcohol concentration of .08 or greater, and one count of criminal damage. He was sentenced to a combination of concurrent and consecutive prison terms totaling 14.5 years. We affirmed his convictions and sentences in each of his appeals. *State v. Baker*, No. 2 CA-CR 2005-0066 (memorandum decision filed Feb. 15, 2007); *State v. Baker*, No. 2 CA-CR 2004-0442 (memorandum decision filed Nov. 29, 2006); *State v. Baker*, No. 2 CA-CR 2004-0352 (memorandum decision filed Sep. 27, 2006). And, in each case, the trial court has denied Baker’s petition for post-conviction relief, and we have denied relief on review. *State v. Baker*, No. 2 CA-CR 2009-0388-PR (memorandum decision filed Mar. 26, 2010); *State v. Baker*, No. 2 CA-CR 2009-0276-PR (memorandum decision filed Feb. 25, 2010); *State v. Baker*, No. 2 CA-CR 2008-0261-PR (memorandum decision filed Mar. 11, 2009).

¶3 In March 2010, Baker filed a petition for writ of habeas corpus in CR20040490, requesting that his sentences and convictions be vacated because the Arizona Department of Corrections had, inter alia, denied him access to his legal materials, “ultimately destroying them,” and denied his requests for assistance from a paralegal.¹ Baker also requested that the trial court “transmit records” from his civil rights proceeding in federal court to the superior court, “waive[]” the formal requirements

¹Baker filed petitions for writ of habeas corpus raising identical claims in CR20042647 and CR20040488. Both were denied, and Baker sought relief in this court pursuant to Rule 32.9, Ariz. R. Crim. P. We denied review under Rule 32.9, determining that the proper avenue to seek review of the denial of a habeas petition was by appeal. *State v. Baker*, Nos. 2 CA-CR 2010-0298-PR, 2 CA-CR 2010-0311-PR, ¶¶ 6-7 (consolidated) (memorandum decision filed Jan. 7, 2011). We also determined that, even if his petitions for review were construed as notices of appeal from the denial of his habeas claims, neither was timely filed and therefore we lacked jurisdiction. *Id.*

for filing his petition, and appoint him counsel. In April, the court granted Baker's motion to appoint counsel.

¶4 In July, Baker filed a notice stating that he had sent a letter to his appointed counsel but had received no response. The next day, counsel filed a notice stating he had "reviewed the documents received to date of what [Baker] has filed, and researched the issues," and that he had "sent Mr. Baker a letter requesting additional information from him and [was] awaiting his response." The state filed a response to Baker's pro se petition in August, and on September 8, the trial court summarily denied that petition, noting Baker had not filed a reply.

¶5 Baker then filed a pro se motion for reconsideration, requesting that the trial court "grant [his counsel] the opportunity to explain his cause for failing to timely file pleadings and/or a reply to the State's response," and, if necessary, appoint new counsel or permit him to file a pro se reply. On September 29, the court stated it "w[ould] not consider the pro se motion for reconsideration in light of [Baker]'s representation by counsel." There was no further activity in the case until, in January 2012, counsel moved to withdraw, stating "[t]here are no issues to be resolved." After the court granted that motion, Baker filed a "motion to resume review of petition for writ of habeas corpus," which the court denied on February 21, stating that it "perceive[d] no basis to review a matter that has been resolved." Baker filed a notice of appeal on March 12, stating he was appealing from the court's February 21 ruling.

¶6 Baker's opening brief, however, primarily addresses the propriety of the trial court's denial of his pro se petition for writ of habeas corpus. Even if we construed Baker's notice of appeal as seeking review of that ruling, the time for appeal has long passed and therefore we lack appellate jurisdiction. *See* Ariz. R. Civ. P. 9(a) (appeal

must be filed within thirty days of judgment); A.R.S. § 12-2101(A)(11)(a) (permitting appeal from “order or judgment refusing [petitioner’s] discharge”); *James v. State*, 215 Ariz. 182, ¶ 11, 158 P.3d 905, 908 (App. 2007) (no jurisdiction to review untimely appeal); *Sims v. Ryan*, 181 Ariz. 330, 331, 890 P.2d 625, 626 (App. 1995) (habeas corpus proceedings civil in nature). The sole argument available to Baker is that the court erred in denying his motion requesting that the court “resume review” of his petition. But he does not argue the court was permitted, much less required, to reopen review of a petition denied more than sixteen months prior. Accordingly, we do not address that question. *See* Ariz. R. Civ. App. P. 13(a)(6); *Rigel Corp. v. State*, 225 Ariz. 65, n.3, 234 P.3d 633, 635 n.3 (App. 2010) (court will not consider argument not raised on appeal).

¶7 Baker having raised no issues this court has jurisdiction to address, the trial court’s order denying Baker’s motion to “resume review” of his habeas petition is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge